

Michigan Governor Signs Into Law Two Landmark Bills Repealing Right-to-Work Language

March 27, 2023

On March 24, 2023, Governor Gretchen Whitmer signed into law two significant pieces of legislation amending Michigan labor laws: **Public Act ("PA") 9** (2023), and its private sector equivalent, **PA 8** (2023). Together, both eliminate "right-to-work" statutory language that previously allowed public and private employees to refuse to join a union. The new laws allow public and private employers to require employees to pay union dues as a condition of employment. Each law also appropriates \$1 million to the Department of Labor and Economic Opportunity for implementation. The appropriation was included to prevent a public referendum in which voters could have rejected the law. PA 8 and 9 take effect 90 days after the end of the current (102nd) legislative session. There is some uncertainty as to the exact date on which the current legislative session will end and therefore a firm effective date is not yet established.

PA 8 amends Michigan's Labor Mediation Act, which regulates on a state level private labor law. The law removes previous language prohibiting an individual from being required to become or remain a union member or pay dues, fees, or other charges to a union. The law also removes previous language declaring that it is in the best interest of the people of Michigan to protect the "right to work."

PA 9 amends Michigan's principal public sector labor law statute, the Public Employment Relations Act ("PERA"), by authorizing public employers to make an "agreement with an exclusive bargaining representative to require as a condition of employment that all other employees in the bargaining unit pay to the exclusive bargaining representative a service fee equivalent to the amount of dues uniformly required of members of the exclusive bargaining representative." PA 9 contains a trigger provision for this specific section of the new law, providing that it only becomes effective upon the ratification of a constitutional amendment or "a decision or ruling by the United States Supreme Court that reverses or limits, in whole or in part, *Janus v AFSCME*, 138 S. Ct. 2448 (2018)." *Janus* struck down an Illinois state law that authorized unions to assess nonunion public employees "agency fees" to cover their proportionate share of union dues attributable to union activities conducted on behalf of nonunion members. (**See our prior alert on the *Janus* decision.**) In the meantime, such agreements remain prohibited.

Employers should assess whether existing collective bargaining agreements contain union security clauses that were inserted into contracts after right-to-work legislation was passed in 2012 which may contain language on what effect a legislative repeal would have on union membership and dues. Private-sector employers also should be prepared to negotiate provisions relating to union membership, dues and service fees.

Please contact your Miller Canfield attorney or one of the authors of this alert if you have questions about the impact these laws may have on your workforce.